

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ANTHONY HOLDER,

Plaintiff,

v.

STATEMENT AUTO SALES,

Defendant.

ORDER

19-CV-1159 (MKB) (RML)

MARGO K. BRODIE, United States District Judge:

Plaintiff Anthony Holder commenced the above-captioned action on February 27, 2019 against Defendant Statement Auto Sales, alleging that Defendant altered the odometer and gave false disclosures about the history and mileage of a motor vehicle that Plaintiff purchased from Defendant, in violation of the Motor Vehicle Information and Cost Savings Act, 49 U.S.C. § 37201, *et seq.* (the “Federal Odometer Act”), and the New York General Business Law § 349. (Compl., Docket Entry No. 1.) Plaintiff also asserted state law fraud and fraudulent misrepresentation claims against Defendant. (*Id.*) The parties cross-moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, (Def. Mot. for Summ. J., Docket Entry No. 12; Pl. Mot. for Summ. J., Docket Entry No. 15), and on August 29, 2019, the Court referred the motions to Magistrate Judge Robert M. Levy for a report and recommendation. (Order dated Aug. 29, 2019.)

By report and recommendation dated February 18, 2020, Judge Levy recommended that the Court grant Defendant’s motion for summary judgment as to the Federal Odometer Act claims, deny Plaintiff’s motion as to those same claims, and decline to exercise supplemental

jurisdiction over Plaintiff's remaining state law claims, (the "R&R"). (See R&R, Docket Entry No. 20.)

No party has objected to the R&R and the time for doing so has passed.

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "Where parties receive clear notice of the consequences, failure to timely object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision." *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P&C Food Markets, Inc.*, 313 F. 3d 758, 766 (2d Cir. 2002) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F. 2d 15, 16 (2d Cir. 1989) (per curiam))); see also *Sepe v. N.Y. State Ins. Fund*, 466 F. App'x 49, 50 (2d Cir. 2012) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); see also *Almonte v. Suffolk Cty.*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) ("[A] party waives appellate review of a decision in a magistrate judge's [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue." (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1). The Court grants Defendant's motion as to the Federal Odometer Act claims and dismisses those claims with prejudice and denies Plaintiff's motions as to those claims. The Court declines to exercise supplemental jurisdiction over

Plaintiff's state law claims for violation of General Business Law § 349, fraud, and fraudulent concealment, and dismisses those claims without prejudice. The Court directs the Clerk of Court to close this case.

Dated: March 5, 2020
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge